

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:11CR296
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
FRANCISCO HERNANDEZ,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 53). The government adopted the PSR (Filing No. 52). The Defendant filed a Motion for Downward Departure (Filing No. 54) and a Motion for Variance (Filing No. 55), as well as a supporting brief (Filing No. 56). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 38 of the PSR, arguing that the prior conviction set out in ¶ 38 should be considered relevant conduct. Hernandez argues that, if ¶ 38 is relevant conduct, he is eligible for a departure under U.S.S.G. § 5K2.23 (discharged term of imprisonment). If the objection to ¶ 38 is denied, Hernandez requests a variance. The Court will hear the objection to ¶ 38 and the Motions for Downward Departure and Variance at sentencing. Hernandez will be granted leave to file supporting documents prior to sentencing.

IT IS ORDERED:

1. The Defendant’s objection to ¶ 38 of the PSR will be heard at sentencing;

2. The Defendant's Motions for Downward Departure (Filing No. 54) and Variance (Filing No. 55) will be heard at sentencing;

3. The Defendant's request to file supporting documents out of time is granted, and the documents may be filed on or before 8:00 a.m. on May 14, 2012;

4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 4 of this Order, my tentative findings may become final; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 3rd day of May, 2012.

BY THE COURT:

s/ Laurie Smith Camp
Chief United States District Judge